



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,248	02/19/2002	William Harold Falberg		1804

7590 11/03/2004

William Harold Falberg
1942 White #2
Grand Junction, CO 81501

EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,248

Applicant(s)

FALBERG, WILLIAM HAROLD

Examiner

Ghassem Alie

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19/0/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: Bona Fide, Non Responsive Amendments.

Bona Fide, Non-Responsive Amendments

1. The reply filed on 11/28/03 is not fully responsive to the prior Office Action mailed on 5/23/03 because of the following omission(s) or matter(s): Applicant's have submitted new drawings and a new specification that were not required. However, when a new specification is filed, it must be in compliance with 37 CFR 1.125 with respect to a marked up copy and a statement of no new matter. In addition, applicant did not respond to the Examiner's specific objections and rejections which is required by 37 CFR 1.111. Lastly, Amendments to the claims must be in compliance with 37 CFR 1.121 with respect to underlining, crossing out, and identifying the amended or other status for each claim. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

2. The following steps may assist the applicant in preparing a response to the Non-final Office action:

- a. Canceling claims 1-8 (e.g., Claims 1-8 (cancelled)). The text of the cancelled claim must not be presented.
- b. Providing a set of new claims which are started by No. 9. New claims must include status identifiers (e.g., Claim 9 (new) A...).
- b. Canceling the specification.
- c. Submitting a specification marked as to what is to be added and deleted. The

Specification must be in compliance with 37 CFR 1.125 with respect to a marked up copy and a statement of no new matter.

- d. Providing a clean copy of the new specification.
- e. Providing an attachment having a heading such as "Remarks" which includes a summary of what was done, an argument regarding patentability of the claims, and a statement of no new matter has been entered.

3. For Applicant's convenience, the patent rules that have been cited in the previous Office action is also cited below.

Applicant is advised to follow the patent rules cited below and respond to the non-final Office action accordingly. Any changes to the specification, drawings, and the claims must be made according to the patent rules.

§ 1.111 Reply by applicant or patent owner to a non-final Office action.

(a) (1) If the Office action after the first examination (§ 1.104) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment. See §§ 1.135 and 1.136 for time for reply to avoid abandonment.

(2) A second (or subsequent) supplemental reply will be entered unless disapproved by the Commissioner. A second (or subsequent) supplemental reply may be disapproved if the second (or subsequent) supplemental reply unduly interferes with an Office action being prepared in response to

Art Unit: 3724

the previous reply. Factors that will be considered in disapproving a second (or subsequent) supplemental reply include:

- (i) The state of preparation of an Office action responsive to the previous reply as of the date of receipt (§ 1.6) of the second (or subsequent) supplemental reply by the Office; and
 - (ii) The nature of any changes to the specification or claims that would result from entry of the second (or subsequent) supplemental reply.
- (b) In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

Art Unit: 3724

(c) In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

37 CFR 1.121. Manner of making amendments in application.

(a) Amendments in applications, other than reissue applications . Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) Specification other than the claims and listings provided for elsewhere (§ § 1.96 and 1.825) . —

(1) Amendment by instruction to delete, replace, or add a paragraph. Amendments to the specification, other than the claims and listings provided for elsewhere (§ § 1.96 and 1.825), may be made by submitting:

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a deleted paragraph with one or more replacement paragraphs, or add one or more paragraphs;

(ii) Any replacement or added paragraph(s) in clean form, that is, without markings to indicate the changes that have been made; and

(iii) Another version of any replacement paragraph(s), on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version

Art Unit: 3724

of the paragraph(s). The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added paragraph or a deleted paragraph as it is sufficient to state that a particular paragraph has been added, or deleted.

(2) Amendment by replacement section . If the sections of the specification contain section headings as provided in § § 1.77(b), 1.154(b), or § 1.163(c), amendments to the specification, other than the claims, may be made by submitting:

- (i) A reference to the section heading along with an instruction to delete that section of the specification and to replace such deleted section with a replacement section;
- (ii) A replacement section in clean form, that is, without markings to indicate the changes that have been made; and
- (iii) Another version of the replacement section, on one or more pages separate from the amendment, marked up to show all changes relative to the previous version of the section. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system.

(3) Amendment by substitute specification . The specification, other than the claims, may also be amended by submitting:

- (i) An instruction to replace the specification;
- (ii) A substitute specification in compliance with § 1.125(b); and
- (iii) Another version of the substitute specification, separate from the substitute specification, marked up to show all changes relative to the previous version of the specification. The changes may be shown by brackets (for deleted matter), or underlining

Art Unit: 3724

(for added matter), or by any equivalent marking system.

(4) Reinstatement : Deleted matter may be reinstated only by a subsequent amendment presenting the previously deleted matter.

(c) Claims. —

(1) Amendment by rewriting, directions to cancel or add . Amendments to a claim must be made by rewriting such claim with all changes (e.g, additions, deletions, modifications) included.

The rewriting of a claim (with the same number) will be construed as directing the cancellation of the previous version of that claim. A claim may also be canceled by an instruction. (i) A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g., “amended, ” “twice amended, ” or “new ”).

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, e.g., “amended, ” “twice amended, ” etc. The parenthetical expression “amended, ” “twice amended, ” etc. should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system.

Art Unit: 3724

A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) A clean version of the entire set of pending claims may be submitted in a single amendment paper. Such a submission shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version is required only for claims being changed by the current amendment (see paragraph (c)(1)(ii) of this section). Any claim not accompanied by a marked up version will constitute an assertion that it has not been changed relative to the immediate prior version.

(d) Drawings . Application drawings are amended in the following manner: Any change to the application drawings must be submitted on a separate paper showing the proposed changes in red for approval by the examiner. Upon approval by the examiner, new drawings in compliance with § 1.84 including the changes must be filed.

(e) Disclosure consistency . The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial Correspondence between the claims, the remainder of the specification, and the drawings.

(f) No new matter . No amendment may introduce new matter into the disclosure of an application.

(g) Exception for examiner 's amendments: Changes to the specification, including the claims, of an application made by the Office in an examiner 's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner 's

amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2) or (c)(1) of this section is not required.

(h) Amendments in reissue applications. Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(i) Amendments in reexamination proceedings : Any proposed amendment to the description and claims in patents involved in reexamination proceedings in both ex parte reexaminations filed under § 1.510 and inter partes reexaminations filed under § 1.913 must be made in accordance with § 1.530(d)-(j).

(j) Amendments in provisional applications: Amendments in provisional applications are not normally made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered

§ 1.125 Substitute specification.

(a) If the number or nature of the amendments or the legibility of the application papers renders it difficult to consider the application, or to arrange the papers for printing or copying, the Office may require the entire specification, including the claims, or any part thereof, be rewritten.

(b) A substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by:

(1) A statement that the substitute specification includes no new matter; and

- (2) A marked up version of the substitute specification showing all the changes (including the matter being added to and the matter being deleted from) to the specification of record. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.
- (c) A substitute specification submitted under this section must be submitted in clean form without markings as to amended material. The paragraphs of any substitute specification, other than the claims, should be individually numbered in Arabic numerals so that any amendment to the specification may be made by replacement paragraph in accordance with § 1.121(b)(1).
- (d) A substitute specification under this section is not permitted in a reissue application or in a reexamination proceeding.

An Examination of this application reveals that applicant is unfamiliar with patent prosecuting procedure,. While an inventor may prosecute the application, lack of skill in the field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services value of a patent is largely dependent upon skillful preparation and prosecution. Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20402.

Art Unit: 3724

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (703) 305-4981.


The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (703) 305-1082. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

September 1, 2004


Allan N. Shoap
Supervisory Patent Examiner
Group 3700